

Paper No. 24  
HRW

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

OCT. 21, 98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re James E. Winner, Jr.

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Serial No. 74/541,822

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Robert V. Vickers of Vickers, Daniels & Young for  
applicant.

Richard C. Cole, Trademark Examining Attorney, Law Office  
104 (Sidney Moskowitz, Managing Attorney).

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Before Sams, Seeherman and Wendel, Administrative Trademark  
Judges.

Opinion by Wendel, Administrative Trademark Judge:

James E. Winner, Jr. has filed an application to  
register the mark THE WIZARD for "anti-theft devices for  
motor vehicles, namely, electronic ignition locks."<sup>1</sup>

Registration has been finally refused under Section  
2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the

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<sup>1</sup> Ser. No. 74/541,822, filed June 24, 1994, based on a bona fide  
intent to use.

ground of likelihood of confusion with the registered mark THE WIZ for "intrusion detectors for use in alarm systems."<sup>2</sup>

Applicant and the Examining Attorney have filed briefs, but the request for an oral hearing was withdrawn.

Looking first to the marks involved, we fail to see the distinction which applicant is attempting to draw between the connotations and commercial impressions of THE WIZARD and THE WIZ. Although applicant argues that "wizard" connotes a "sorcerer" or "magician" and "wiz" connotes a "generally smart person", with no magical powers, the dividing line is not so clear. In the excerpt introduced by applicant from Webster's Collegiate Thesaurus, the word "wizard" is explicitly set forth as one synonym for the word "wiz", while the second level of synonyms for "wizard" are all terms such as "expert", "whiz" and "wiz". Even in the Lexis/Nexis database excerpts submitted by applicant, we find evidence of the interchangeable use of the terms "wizard" and "wiz". We cannot agree with applicant that reference to Bill Gates as

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<sup>2</sup> Reg. No. 1,138,618, issued Aug. 12, 1980, which sets forth first use dates of Jan. 16, 1978. Combined §§ 8 and 15 affidavit filed.

"Microsoft wizard boy" (The Boston Globe, Apr. 1, 1995) or to a French financier as a "financial wizard" (The New York Times, Apr. 2, 1995) denotes magical powers beyond that of a person of outstanding ability. Instead the term "wizard" appears to be used in these articles in the same sense that "wiz" is used in the reference to Stan Winston, as "the special effects creator who was the wiz behind Jurassic Park" (The Orlando Sentinel, Mar. 23, 1995).

Thus, we agree with the position taken by the Examining Attorney that the marks are "remarkably similar in overall appearance and meaning." As he points out, the definition of "wizard" from Random House College Dictionary which he has made of record also demonstrates the interchangeable use of the words "wizard" and "wiz", "wizard" being described therein as "also called whiz, wiz." Furthermore, we agree with the Examining Attorney that the prefacing of both marks with the word THE increases the similarity of the overall impressions created by the two marks. We do not believe that consumers would make the distinction argued by applicant, that applicant's mark THE WIZARD, when used with its ignition lock, connotes magic, but registrant's mark THE WIZ, when used with an intrusion device, connotes skill or effectiveness.

We turn next to applicant's argument that the terms "wizard" and "wiz" are weak, and thus entitled to a limited scope of protection when used in connection with electronic goods. Applicant has submitted soft copies of several third-party registrations which it contends illustrate the common use of the word "wizard" or "wiz" or a combination of words including "wiz" by others for consumer electronic products.

Upon review of these registrations, we find that the goods for the most part are computer products, either software or hardware. Others include such unrelated goods as stereo equipment, hand drills and tape measures. The retail services for which the mark THE WIZ is registered are in the area of computer products and consumer electronics. None of the goods or services is directed to anti-theft devices or alarm systems. While applicant's anti-thief device may be electronic in operation, all electronic products, regardless of their function, cannot be considered related goods for purposes of Section 2(d). We find the third-party registrations to be for unrelated goods and services, thus failing to establish that the words "wizard" or "wiz" have any significance for any type of security devices. See *In re Mitsubishi Jidosha Kogyo Kabushiki Kaisha*, 19 USPQ2d 1633 (TTAB 1991).

Furthermore, the existence of third-registrations is not evidence of what happens in the market or that consumers are familiar with them. See *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1543 (Fed. Cir. 1992); *AMF Inc. v. American Leisure Prods. Inc.*, 474 F.2d 1403, 177 USPQ 268 (CCPA 1973). Thus, in the absence of any probative evidence of the alleged weakness of registrant's mark, we find the scope of protection for the mark should not be restricted.

With respect to the goods of the parties, it is sufficient for the purpose of finding likelihood of confusion that the goods and/or the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under conditions that could give rise to the mistaken belief, because of the use of similar marks, that they emanate from, or are associated with, the same source. See *In re Vienna Sausage Manufacturing Co.*, 16 USPQ2d 2044 (TTAB 1990); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988).

Applicant contends that the present goods are not interchangeable, do not perform the same functions and would not even be likely to be viewed by the same consumers, in that the registrant's goods are only a

component of an alarm system, not a finished product. The Examining Attorney, on the other hand, maintains that the products, while not identical, are both used for the prevention of theft and conceivably could be used conjointly on the same vehicle, to attempt to prevent both entrance to the car and access to the ignition system.

At the outset, we find no basis for considering registrant's intrusion devices as other than consumer goods which might be purchased by the general public. There is no limitation in the identification of goods which leads us to believe, as applicant argues, that the devices are sold only to manufacturers as components for use in the end manufacture of alarm systems. They could just as well be purchased by the ordinary consumer for use as a part of an alarm system. Nor is there any limitation as to the area of use of registrant's intrusion devices. It is common knowledge that sensing devices are used on automobiles to prevent the intrusion of thieves, as well as used to detect intruders in the home. Furthermore, even if opposer's devices were used as a part of a home alarm system, both security devices would be available to the same consumers. Upon encountering THE WIZ intrusion device as a part of a home alarm system and THE WIZARD automobile anti-theft device, these consumers might well assume that the goods

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emanate from the same source or at the very least are associated with the same source.

Accordingly, on the basis of the relevant duPont factors, we conclude that the likelihood of confusion has been established.

Decision: The refusal to register under Section 2(d) is affirmed.

J. D. Sams

E. J. Seeherman

H. R. Wendel  
Trademark Administrative Judges,  
Trademark Trial and Appeal Board

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